

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

KOCH FOODS OF ALABAMA, LLC,
an Alabama limited liability company,

Plaintiff and Counter-
Defendant,

vs.

GENERAL ELECTRIC CAPITAL
CORPORATION, a Delaware corporation,

Defendant, and Counter-
Plaintiff,

CIVIL ACTION NO.
2:07 CV 522-MHT

AGREED MOTION TO EXTEND DEADLINE TO FILE DISPOSITIVE MOTIONS

Defendant and Counterplaintiff, General Electric Capital Corporation (“Defendant”), by its counsel, and pursuant to the Uniform Scheduling Order entered in the above-captioned proceeding on or about July 17, 2007 (the “Scheduling Order”), hereby moves for the entry of an order extending the date by which the parties may file dispositive motions (the “Dispositive Motion Deadline”). In support thereof, Defendant respectfully states as follows:

1. On or about May 25, 2007, Koch Foods of Alabama, LLC (“Plaintiff”) filed its Complaint for Declaratory Judgment and Unjust Enrichment (the “Complaint”) in the Circuit Court of Montgomery County, Alabama. Thereafter, Defendant removed the proceeding to this Court.

2. On July 17, 2007, this Court entered the Scheduling Order, which provides that dispositive motions shall be filed no later than 90 days prior to the pretrial conference. *Scheduling Order*, § 2. The Scheduling Order also scheduled the pretrial conference for February 20, 2008. *Id.*, § 1. As such, the Dispositive Motion Deadline is currently scheduled to expire on or around November 22, 2007.

3. Since the entry of the Scheduling Order, the parties have been working diligently to complete discovery. Nevertheless, because of scheduling conflicts of the deponents and

counsel, Defendants have encountered difficulties in scheduling certain depositions in advance of the Dispositive Motion Deadline.

4. Prior to filing this motion, and in compliance with § 5(B) of the Scheduling Order, Defendant communicated with counsel to Plaintiff and proposed that the Dispositive Motion Deadline be extended to December 7, 2007. Plaintiff's counsel has agreed to this extension.

5. Defendant believes that the extension contemplated herein will provide it with adequate time to depose all necessary witnesses in advance of the Dispositive Motion Deadline¹ and that no party will be prejudiced by such an extension. Furthermore, by filing this motion, Defendant does not seek to modify any dates or deadlines other than the Dispositive Motion Deadline.

WHEREFORE, Defendant respectfully requests that this Court enter an order (a) extending the Dispositive Motion Deadline until December 7, 2007, and (b) stating that all other deadlines set pursuant to the Scheduling Order shall remain unchanged.

Dated: October 19, 2007.

Respectfully submitted,

GENERAL ELECTRIC CAPITAL CORPORATION

By: /s/ Rusha C. Smith
Rusha C. Smith

OF COUNSEL:
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¹ The discovery deadline in the Scheduling Order is December 4, 2007, which the parties do not seek to extend in the Motion.

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2007, I caused a copy of the foregoing Agreed Motion to Extend Deadline to File Dispositive Motions (the "Motion") to be filed electronically. Notice of this filing was sent automatically, via the Court's CM/ECF system, to all parties that have filed an electronic appearance in the proceeding. In addition, on October 19, 2007, I caused a copy of the Motion to be served upon counsel of record addressed as follows:

Thomas G. Mancuso, Esq.
Mancuso & Franco, P.C.
7515 Halcyon Summit Drive
Suite 301
Montgomery, AL 36177

Eugene J. Geekie, Jr., Esq.
Mike Xu, Esq.
Schiff Hardin LLP
6600 Sears Tower
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By both e-mailing and placing same in the United States mail, postage prepaid, on this the 19th day of October, 2007.

/s/ Rusha C. Smith
COUNSEL